

Summary

Government Reform Committee Consideration of Civil Service and National Security Personnel Improvement Act

On May 7, 2003, the House Government Reform Committee passed the Civil Service and National Security Personnel Improvement Act (H.R. 1836) on a party-line vote of 21 to 15. The Government Reform minority believes that the Department of Defense (DoD) needs some personnel flexibility but that any new personnel system should contain safeguards for employee rights. Unfortunately, the bill is a blank check that strips almost 700,000 DoD civilian employees of due process, appeal, and collective bargaining rights. These civil service protections have been enacted over the past century to prevent the federal government from becoming a patronage system.

In two hearings before the Committee, DoD witnesses provided virtually no details about the new personnel system that would be implemented and no rationale for why chapters relating to employee rights should be waived. Often, the only rationale DoD provided for seeking waivers of Title 5 was that the Homeland Security Department had received the same waivers last year.

The Government Reform Committee minority was also critical of the expedited consideration of the bill. DoD did not send its proposal to Congress until April 10, and the bill was not introduced until April 29. Eight days is not enough time to consider a bill that will affect one-third of federal civilian employees and will likely become the de facto personnel system for the entire federal government. Moreover, DoD never formally consulted with unions representing DoD employees during the development of the proposal.

Based on pre-markup negotiations and amendments passed during the markup, several changes were made to the initial proposal submitted by the Defense Department in April. Some of these changes improved the bill:

- The number of waivable chapters under Title 5 of the U.S. Code was scaled back to the six chapters that were waived in the homeland security bill.
- The original provisions exempting the DoD personnel regulations from notice and comment requirements were dropped.
- Language was added to the bill to require DoD to notify Congress if it implemented parts of the personnel system over the objections of employee representatives.
- A provision allowing the Defense Secretary to invoke national security and trump OPM was modified to require that the national security exception be the President's decision.
- Standards were added to the bill to require that a performance-based pay system

incorporate elements of accountability and transparency.

- Language was added to the bill to allow employee appeals to an independent review panel. Language also was added to require consultation with the EEOC during the development of the new personnel system.

On balance, however, the bill still gives far too much flexibility to DoD without providing any meaningful safeguards to employees. Efforts by the minority to restore completely Chapters 43, 71, 75, and 77 (Title 5, U.S. Code), which relate to due process, appeal, and collective bargaining rights, were defeated on party-line votes. Also defeated was an amendment to require DoD to submit a legislative proposal detailing its new personnel system before DoD received any authority and an amendment to limit the new flexibilities only to DoD managers.

Other amendments considered by the Committee were:

- An amendment was passed prohibiting the use of numerical goals or quotas for subjecting federal employees to public-private competitions or outsourcing, unless the goal or quota was based on sound analysis and consistent with the agency's mission.
- An amendment was passed giving federal employees called up for duty in the military reserves the difference between their reserves salary and their civilian salary.
- An amendment was passed prohibiting agencies from charging fees to employees for setting up flexible spending accounts.
- An amendment was passed requiring agencies to conduct annual employee surveys.
- An amendment was defeated which would have provided all federal civilian employee with the same pay increases as the military.
- An amendment was defeated which would have required DoD to receive an unqualified audit opinion before it could exercise any authorities.

In addition, the bill grants hiring and pay authorities sought by SEC and NASA. The Government Reform Committee minority supported the SEC flexibilities but argued that these flexibilities, which were based on a current critical need, should be temporary. An amendment to sunset these authorities in five years was defeated.

The minority opposed the NASA flexibilities as unwarranted and premature. An amendment was passed prohibiting NASA supervisors from receiving more than 15% of the relocation, retention, and recruitment bonuses authorized under the bill. Another amendment was passed that would require NASA to consider employee input into any workforce flexibilities employed by the agency.